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COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON

CIG-A-51034

P-69416

September 26, 1947

Director of Central Intelligence Group,

2430 E Street, N.W.,

Washington, D.C.

Dear Admiral Hillenkoetter:

Reference is made to your letter of September 8, 1947, as follows:

"This office has for consideration the payment of terminal leave to a former employee separated from the service because of questionable loyalty to the United States Government. The propriety of making refund of retirement deductions is a related problem and a copy of your decision will be forwarded to the Civil Service Commission with the employee's application for refund of retirement. The name of the employee is omitted from this letter and attachment, not only for the protection of the individual, but also because the issue here raised is expected to be of general and continuing interest in actual or contemplated similar cases. It would be appreciated if an early confidential decision could be rendered since the individual has repeatedly requested prompt action with respect to payment of Lump Sum Leave to her credit.

"Under date of February 27, 1947, the Director of Civilian Personnel, CIG, was instructed by the Civil Service Commission to separate the subject employee on the basis of an investigation conducted by that office. A true copy of letter dated February 27, with employee's name omitted, is attached for your consideration. This office notified the employee of the Commission's action, informed her of her right to appeal, and suspended her effective close of business 31 March 1947, for a period not to exceed ninety days pending final action by the Commission. The employee appealed her case and the Commission sustained its original decision. The employee was separated from the rolls of the Central Intelligence Group effective close of business 30 June 1947.

"While it would appear that the subject employee may be pro-communist, and that her loyalty is subject to reasonable doubt, her views and such reasonable doubt do not seem to constitute proof of any illegal act or of any act in contravention of the laws and regulations controlling payment of salaries and retirement refunds. If charges of this nature had been certified against the employee there

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would be no doubt as to the withholding of monies normally due her, action in this regard being clearly set out in Chapter C2 (page 17), Federal Personnel Manual. In the case at hand, however, the employee is suspected of being pro-communist and it is doubted that a person falling within the category of a suspect only is to be considered as personally advocating the overthrow of the Government of the United States by force or violence when no positive showing has been made that such person belongs to an organization advocating such action. In this connection reference is made to Section 10, Military Appropriation Act, 1947 (an appropriation established therein having been made available to the working fund under which this Agency operated), which provides, in part, as follows:

"No part of any appropriation contained in this Act shall be used to pay the salary or wages of any person * * * * * who advocates, or is the member of an organization that advocates, the overthrow of the Government of the United States by force or violence; * * * * *

"Reference is also made to Standard Form No. 61a, Oath of Office, Affidavit, and Declaration of Appointee, which contains provisions sworn to by the subject employee with respect to the bearing of true faith and allegiance to the United States and nonadvocacy of the overthrow of the Government of the United States.

"Your decision as to complete action to be taken in this and similar cases will be greatly appreciated."

The employee referred to in your letter has been separated from the service "because of questionable loyalty to the United States Government." There now is for determination the question whether that employee "advocates or is a member of an organization that advocates the overthrow of the Government of the United States by force or violence" within the meaning of those words as used in section 10 of the Military Appropriation Act of 1947, 60 Stat. 564. If so, then the use of the funds provided by said act would, by virtue of the statutory provisions quoted in your letter, be precluded in respect of the lump-sum payment of annual leave otherwise due the subject employee at the time of separation. The existence of a reasonable doubt as to

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the loyalty of an employee to the United States such as would form a proper basis for separating the employee from the service would not be conclusive per se of advocacy to overthrow the Government by force for the purpose of applying the prohibitory provisions against the use of the funds in that connection. The question of whether an employee "advocates, or is a member of an organization that advocates, the overthrow of the Government by force or violence" within the meaning of the statutory provisions quoted in your letter is one primarily for administrative determination and such determination, when made, will not ordinarily be questioned by the General Accounting Office, unless the record upon which it is made clearly shows it to be erroneous. Cf. decision of February 26, 1947, B-63079. In that connection it may be stated that the record transmitted with your letter has been examined and no such determination has been found, but upon the basis of the facts presented here no reason is perceived why there should be questioned an administrative determination that the subject employee is not within the statutory inhibition referred to.

In regard to the propriety of making refund of retirement deductions to the individual in question, that matter is, of course, primarily within the jurisdiction of the United States Civil Service Commission and is not one properly before this office for consideration at this time.

Respectfully,



Comptroller General
of the United States.